ANN BAVENDER*
JAMES A. CASEY
KAREN L. CASSER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR
PAUL J. FELDMAN*
ERIC FISHMAN*
RICHARD HILDRETH
EDWARD W. HUMMERS, JR.
FRANK R. JAZZO
CHARLES H. KENNEDY*
KATHRYN A. KLEIMAN
PATRICIA A. MAHONEY
M. VERONICA PASTOR*
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
MARVIN ROSENBERG
KATHLEEN VICTORY*
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

HILDRETH@ATTMAIL.COM

ROBERT L. HEALD
(1956-1983)
PAUL D.P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEHAN
FRANK U. FLETCHER

CONSULTANT FOR INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*

August 15, 1995

WRITER'S NUMBER
(703) 812- 0403

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: IB Docket No. 95-59
Preemption of Local Zoning
Regulation of Satellite Antennas

Dear Mr. Caton:

Transmitted herewith, on behalf of United States Satellite Broadcasting Company, Inc., are an original and four copies of its Reply Comments in the above-referenced docket.

Should there be any questions concerning this matter, please communicate with the undersigned counsel.

Very truly yours,

Paul J. Feldman
Counsel for
United States Satellite
Broadcasting Company, Inc.

pf:ik
Enclosure

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	IB Docket No. 95-59
Preemption of Local	)	DA 91-577
Zoning Regulation of	)	45-DSS-MISC-93
Satellite Antennas	)	

REPLY COMMENTS OF UNITED STATES SATELLITE BROADCASTING COMPANY, INC.

UNITED STATES SATELLITE
BROADCASTING COMPANY, INC.

Marvin Rosenberg
Paul J. Feldman

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703) 812-0400

August 15, 1995

TABLE OF CONTENTS

		Page
SUMMARY		i
I.	THE RECORD IN THIS PROCEEDING DEMONSTRATES THAT MODIFICATION OF SECTION 25.104 IS NECESSARY IN ORDER TO PROTECT IMPORTANT FEDERAL INTERESTS	1
	A. It Is Uncontested That Important Federal Interests Are At Stake	1
	B. The Record Demonstrates That Section 25.104 Must Be Modified	3
	C. The Comments of Certain Municipalities Provide No Basis For Commission Forbearance	5
	1. The Negative Impact of Local Zoning Regulations Is Not Exaggerated	5
	2. Limited Preemption Will Not Result in Substantial Health or Safety Problems	6
	3. Revised Section 25.104 Will Not Overly Burden Municipalities	7
	4. The Commission Has The Authority To Preempt Local Zoning Regulations	8
II.	SPECIFIC REVISIONS TO PROPOSED SECTION 25.104	
	A. The Record Supports *Per Se* Preemption Of Regulation Of Small Dishes	9
	B. Other Revisions To Proposed Section 25.104	10
III.	CONCLUSION	14

Summary

The record in this proceeding demonstrates that modification of Section 25.104 of the Commission's rules is necessary in order to protect important federal interests in promoting the availability of satellite-delivered communications, and in promoting competition in the provision of multichannel video services. The record already contained extensive evidence, and the most recent Comments in this proceeding provide further evidence, that local municipalities continue to use zoning regulations in a manner that improperly and unnecessarily impedes the development of the direct broadcast satellite ("DBS") service and other satellite services.

The comments filed by certain municipalities provide no basis for Commission forbearance. The negative impact of local zoning regulations on the development of satellite services has not been exaggerated. A revised Section 25.104 will not result in substantial health or safety problems, and will not overly burden local municipalities. Lastly, it is clear that the Commission has the authority to preempt local zoning regulations as proposed in this proceeding.

The record supports *per se* preemption of local regulation, at least as to dishes one meter in diameter or smaller. There are no substantial aesthetic or safety concerns triggered by such small dishes, but municipalities continue to enact ordinances that substantially burden, and at times practically bar, the use of small dishes.

While the Commission's proposed modifications to Section 25.104 are a good first step, certain revisions are necessary to make the rule more clear and more comprehensive, so that the reader need not refer back to the Commission's *Order*. Such clarifications will increase the likelihood that the rule will be properly applied by

local zoning officials, since it will be less vague and less subject to abuse. However, the Commission should not adopt certain revisions proposed by municipalities that contradict the goals of this proceeding and are unsupported by the record.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	IB Docket No. 95-59
Preemption of Local	)	DA 91-577
Zoning Regulation of	)	45-DSS-MISC-93
Satellite Antennas	)	

REPLY COMMENTS OF UNITED STATES SATELLITE BROADCASTING COMPANY, INC.

United States Satellite Broadcasting Company, Inc. ("USSB"), by its attorneys, hereby submits its Reply Comments in response to the Commission's Notice of Proposed Rulemaking, released May 15, 1995, in the above-captioned proceeding ("*Notice*"). USSB asserts that there is a substantial record in this proceeding to justify the Commission's modification of Section 25.104 of the Commission's Rules as it proposed in the *Notice*, with a few additional clarifications and modifications.

I. THE RECORD IN THIS PROCEEDING DEMONSTRATES THAT MODIFICATION OF SECTION 25.104 IS NECESSARY IN ORDER TO PROTECT IMPORTANT FEDERAL INTERESTS.

A. It Is Uncontested That Important Federal Interests Are At Stake.

The underlying premise of this proceeding is that important federal interests are being improperly and unnecessarily hampered by local municipalities. As stated in the *Notice*, the Commission has a broad mandate under Sections 1 and 705 of the Communications Act to promote the availability of satellite-delivered communications. *See Notice* at paras. 3, 42-43. Furthermore, there is a broad federal interest in

promoting competition in the provision of multichannel video services: as was noted in USSB's Comments, the Cable Television Consumer Protection and Competition Act of 1992[1] was premised on Congressional findings that cable TV operators faced no competition in the provision of multichannel video services, and that as a result of this undue market power, charges to subscribers for cable TV services had grown at a rate substantially higher than the rate of inflation.[2] The Commission recognizes that, while DBS has the potential to play an important role in bringing competition to the multichannel video market,[3] the market is not yet competitive, and local zoning regulations inhibit the ability of DBS providers to compete with cable TV operators.[4] Indeed, while Congress previously intended regulation of cable TV rates to be an interim measure until the advent of effective competition to check the market power of cable TV operators, the recent passage of telecommunications legislation reducing the breadth of rate regulation makes it even more critical that the Commission remove unnecessary barriers to the development of competitive satellite services.[5]

---

[1] Pub. L. No. 102-385, 106 Stat. 1460, codified at 47 U.S.C. § 151 *et. seq.*(hereinafter the "1992 Cable Act").

[2] *See, e.g.*, Secs. 2(a)(1)-(2) of the 1992 Cable Act.

[3] *See, Assessment of Competition in the Market for the Delivery of Video Programming, First Report and Order*, 9 FCC Rcd 7442, 7449, 7541-42 (1994) (hereinafter, "*1994 Competition R&O*").

[4] *See 1994 Competition R&O*, 9 FCC Rcd at 7555.

[5] *See* S.652, 104th Cong., 1st Sess. §203 (1995).

Many of the Comments filed in response to the *Notice* support the importance of protecting these federal interests.[6] And while some municipalities filed comments advocating less dramatic preemption than that proposed in the *Notice*, they cannot contest the importance of the federal interests at stake. Indeed, some of the municipalities explicitly support the advancement of these interests.[7]

B. The Record Demonstrates That Section 25.104 Must Be Modified.

In the *Notice*, the Commission concluded that Section 25.104 must be modified, in part based on the extensive evidence already in the record demonstrating that local zoning restrictions throughout the country have created unreasonable barriers to the growth of satellite communications. *Notice* at paras. 11-25. The Comments in this proceeding provide further evidence that local municipalities continue to use zoning regulations in a manner that improperly and unnecessarily impedes the development of the direct broadcast satellite ("DBS") service and other satellite services.

USSB provided examples of new zoning regulations specifically addressing small DBS dishes which require consumers to obtain a building or special use permit, even after the consumer has complied with screening, set back and placement limitations.[8] These limitations, and the cost, delay and uncertainty associated with the permitting

---

[6] *See, e.g.*, Comments of the Satellite Broadcasting and Communications Association of America ("SBCA") at pages 3-9; Comments of Hughes Network Systems, Inc. ("HNS") at page 21; Comments of Sony Electronics at page 2. *See also* Comments of Home Box Office ("HBO") at pages 5-6.

[7] *See* Comments of Duncan, Weinberg, Miller & Pembroke, P.C. ("Duncan"), filed on behalf of "one hundred state and local governmental entities," at page 4.

[8] *See* Comments of USSB at pages 5-9.

process, are clearly unnecessary, since any health safety or aesthetic concerns underlying the regulations are not triggered by small DBS dishes. Furthermore, because DBS dishes are distributed as mass-market consumer items designed to be quickly and easily purchased and installed unnecessary costs and delays resulting from local zoning requirements will certainly hamper the growth of DBS, and thus its ability to provide competition in the multichannel video market.[9]

Other commenters shared the concerns expressed by USSB,[10] and provided further examples of unnecessary and abusive use of local zoning regulations. SBCA demonstrated that a Prince Georges County, Maryland man had to spend $28,000 and ten months to obtain the approvals necessary to install a $5,000 dish, and that a citizen in East Dearborn, Michigan was denied the right to install a dish to receive Spanish-language programming, based on the zoning board's opinion that the man could speak English and thus did not "need" such programming.[11] HNS provided eight examples of the unnecessary expense and delay associated with obtaining approval for the use of very small aperture terminal ("VSAT") antennas.[12]

---

[9] *See* Comments of DIRECTV at page 4, and Comments of Hughes Communications Galaxy Inc.("HCG") at page 5.

[10] *See, e.g.,* Comments of Comsat Video Enterprises ("CVE") at pages 3-4, Comments of National Rural Telecommunications Cooperative at page 4, and Comments of Sony Electronics at page 2.

[11] Comments of SBCA at pages 11-14, 16-17.

[12] Comments of HNS at pages 6-10.

C. The Comments Of Certain Municipalities Provide No Basis For Commission Forbearance.

Certain municipalities suggest that Commission action in this proceeding is unnecessary or prohibited. These Comments provide no basis for Commission forbearance.

1. The Negative Impact of Local Zoning Regulations Is Not Exaggerated.

Some municipalities assert that the negative impact of local zoning regulations on the use of satellite services has been exaggerated, and thus, there is no need for even the limited preemption proposed in the *Notice*.[13] However, these generally vague and unsupported assertions are inconsistent with the record established in this proceeding. Indeed, the few examples given by the municipalities demonstrate the unnecessary burdens that the Commission proposes to remedy. For example, Dallas/NLC notes that Dallas residents seeking to install satellite dishes only need comply with lot coverage, setback and height requirements, and then file for a building permit![14] As USSB and other commenters have extensively demonstrated, these are exactly the regulatory limitations that effectively ban, or unnecessarily burden, the use of satellite services.

The assertion by the Municipalities that the negative impact of local zoning regulations has been exaggerated is also contradicted by their claims that the regulation

---

[13] *See, e.g.,* Comments of the City of Dallas, *et. al.*, the National League of Cities, the National Association of Counties, and the U.S. Conference of Mayors ("Dallas/NLC") at pages 7-9; and Comments of the City of Muskegon at page 1.

[14] Comments of Dallas/NLC at page 8

proposed in the *Notice* will lead to an overwhelming amount of litigation and complaints being filed at the Commission.[15] If these dire warnings are correct, it will be caused by the municipalities themselves improperly burdening users of satellite services.

2. Limited Preemption Will Not Result in Substantial Health or Safety Problems.

Some municipalities suggest that the limited preemption proposed in this proceeding will result in substantial health or safety hazards. While it is true that zoning and building regulations are, as a general matter, often intended to limit such hazards, the actuality of harm resulting from satellite dish installations, especially small DBS dishes, has not been demonstrated. For example, in a feeble effort to demonstrate harm, the Michigan and Texas Communities assert that "[t]he proposed rule will kill people by permitting the obstruction of vision in the front yard as children and others enter and leave driveways." Comments at page 17(emphasis added). Apparently, we are to believe that an 18 inch dish will substantially restrict visibility, and in a manner greater than the mail boxes, cable boxes, telephone poles and trees commonly found in residential front yards. Such an assertion is not even credible.

Some municipalities express concern that excessive snow loads or the regular presence of hurricanes necessitate local regulations with stringent requirements for anchoring dishes.[16] USSB believes that such concerns do not apply to DBS dishes, and that users of all satellite services have a financial incentive to securely anchor their

---

[15] *See* Comments of Dallas/NLC at page 6. Comments of Michigan and Texas Communities at page 22.

[16] *See* Comments of the City of Plantation at page 4.

dishes, even when they are not explicitly required to do so under local regulations.[17] Furthermore, these extraordinary weather conditions are not present in most communities, and thus do not undercut the rationale for the preemption proposed in this proceeding. If concerns regarding extraordinary weather conditions are valid in particular localities as applied to larger dishes, then such facts can be used to show the reasonableness of specific regulations under Sections 25.104 (a) and (b), or to seek a waiver under Section 25.104(f).

3. Revised Section 25.104 Will Not Overly Burden Municipalities

Some municipalities claim that revision to Section 25.104 will place extraordinary burdens on municipalities, allegedly because many municipalities will not learn of the Commission's action, will not appropriately revise their zoning regulations, and will then have to respond to numerous complaints, without sufficient resources to do so. [18] However, the associations for municipalities (the National League of Cities, the National Conference of Mayors, etc.) can inform their members in a timely manner of the results of this proceeding, and accordingly the municipalities should be able to revise their regulations appropriately [19]

---

[17] *See* Comments of HNS at note 1, stating that installations in South Florida typically use extra ballast to withstand hurricane velocity winds.

[18] *See, e.g.,* Comments of Dallas/NLC at pages 11-12.

[19] Duncan suggests that the effective date of a revised Section 25.104 should be 120 days after enactment, in order to give municipalities sufficient time to conform their regulations to the new federal standards. While some time is obviously necessary, USSB suggests that 90 days constitutes a better balance between the time needed to revise regulations, and the continuing burden imposed on the rights of satellite service users.

4. *The Commission Has The Authority To Preempt Local Zoning Regulations.*

While some municipalities assert that the Commission lacks the authority to preempt local zoning regulations, even to the limited extent proposed in the *Notice*, it is well settled that the Commission may enact regulations that preempt local or state ordinances. *City of New York v. FCC*, 108 S.Ct. 1637 (1988). Numerous Federal courts have specifically upheld the Commission's authority to preempt local zoning regulations that impact the height and placement of amateur radio antennas. *See, e.g., Thernes v. City of Lakeside Park*, 779 F.2d 1187, 1189 (6th Cir. 1986); and *Pentel v. City of Mendota Heights*, 13 F.3d 1261 (8th Cir. 1994). There is no reasonable distinction between the Commission's authority to preempt local zoning of amateur radio antennas, and such authority with respect to satellite antennas, and many courts have upheld preemption under Section 25.104. *See, e.g., Protter v. Village of Elm Grove*, 724 F.Supp. 612 (E.D. Wis. 1989); and *Van Meter v. Township of Maplewood*, 696 F.Supp. 1024 (D.N.J. 1988). The Supreme Court's recent decision in *U.S. v. Lopez*, 63 U.S.L.W. 4343 (April 26, 1995), cited by Dallas/NLC, has no impact on the Commission's authority in this proceeding. In that decision, the Court did not revise the test for evaluating Congressional power under the Commerce Clause (*i.e.*, whether interstate commerce is "substantially affected" by the local activity at issue),[20] it merely held that the presence of guns near local schools does not so affect interstate commerce. In contrast, it is clear that satellite services are a form of interstate

---

[20] *See, e.g., U.S. v. Darby*, 312 U.S. 100, 119-20 (1941)(Congress may regulate intrastate activity that has a substantial effect on interstate commerce).

commerce, and that local regulations that bar or substantially burden the use of satellite services "substantially affect" interstate commerce.[21] In sum, the Commission continues to have the authority to enact Section 25.104.[22]

II. SPECIFIC REVISIONS TO PROPOSED SECTION 25.104

The modification of Section 25.104 proposed in the *Notice* constitutes an important step towards remedying unnecessary burdens on the use of satellite services. However, many comments suggested revisions to the rule proposed by the Commission. Some of these revisions are discussed below.

A. The Record Supports *Per Se* Preemption Of Regulation Of Small Dishes.

The Commission has recognized that there are strong arguments in favor of a *per se* preemption of all local zoning regulations affecting all dishes one meter or less in diameter, and dishes two meters or less in diameter placed in commercial or industrial areas. *Notice* at paras. 61-62. While the Commission declined to adopt a *per se* preemption at this time the record supports such preemption, at least as to one meter dishes.

---

[21] The Court also upheld the long line of jurisprudence that Congress may regulate "channels" of interstate commerce. 63 U.S.L.W. at 4346. Satellite services are clearly channels of interstate commerce.

[22] While the Communications Act currently provides the Commission with broad authority to preempt local regulations that conflict with federal laws or impede the development of a national, unified communications system, recent telecommunications legislation passed by the House of Representatives proposes to make this mandate even more explicit. *See* H.R. 1555, 104th Cong. 1st Sess. Sections 306 ("Exclusive Federal Jurisdiction Over Direct Broadcast Satellite Service") and 308 ("... the Commission shall promulgate regulations to prohibit restrictions that inhibit a viewer's ability to receive video programming services through signal reception devices designed for off-the-air reception of ... direct broadcast satellite services.").

One reason stated by the Commission for not adopting a *per se* approach was that the record did not contain evidence of specific cases where zoning regulations impeded the installation of smaller antennas. *Notice* at para. 66. However, USSB demonstrated that in enacting new zoning regulations specifically addressing small DBS dishes, local municipalities continue to create substantial and unnecessary burdens that inhibit or effectively prevent residents from installing DBS dishes. Comments of USSB at pages 5-8. In sum, with no substantial aesthetic or safety concerns associated with small dishes, especially DBS dishes, having been shown by the municipalities, the record supports *per se* preemption of local zoning regulations affecting such dishes.[23]

B. Other Revisions To Proposed Section 25.104

In its Comments, USSB suggested that certain revisions to proposed Section 25.104 were necessary to make the rule more clear and more comprehensive, so that the reader need not refer back to the Commission's *Order*. Such clarifications will increase the likelihood that the rule will be properly applied by local zoning officials, since it will be less vague, and less subject to abuse.

Further, USSB suggested that because Section 25.104(a)(2) contains the federal interests to be balanced in a test of the reasonableness of local regulations, the section should specifically include the federal interest in facilitating the distribution of interstate satellite communications, as mandated in 47 U.S.C. Sections 151 and 605. Comments

---

[23] Based on this conclusion, USSB asserted in its Comments that the language in Section 25.104(b)(2) proposed in the *Notice* creating a presumption that regulation of dishes one meter in diameter or less is unreasonable, is no longer necessary, and should thus be deleted. However, should the Commission forebear from *per se* preemption of local regulation of one meter dishes then the language of Section 25.104(b) is necessary

of USSB at pages 12-13. Many other commenters, including both the satellite industry[24] and the municipalities,[25] suggested similar revisions.

Proposed Section 25.104(a) establishes the criteria for identifying local zoning regulations subject to preemption, and includes a criterion that the regulation imposes "substantial" costs on users of such antennas. Noting that the term "substantial" connotes an amount greater than the "rather low threshold" intended by the Commission, USSB suggested that the phrase "more than minimal" be substituted for the term "substantial." Comments of USSB at pages 11-12. Many other commenters suggested similar revisions.[26]

Some of the Municipalities proposed revisions to Section 25.104 that contradict the goals of this proceeding and are unsupported by the record. For example, Dallas/NLC suggests (at page 18 of its Comments) that Section 25.104(a)(1) should not require that a local zoning regulation have a "clearly defined and expressly stated" health, safety or aesthetic objective, in order to avoid preemption.[27] Yet, the need for such a requirement is obvious. First, requiring the rationale of the regulation to be

---

[24] *See* Comments of HNS at page 21, Comments of GE American Communications ("GE") at page 9, Comments of HBO at page 6. Comments of Primestar Partners, L.P. ("Primestar") at page 9

[25] *See* Comments of Duncan at pages 9-10.

[26] *See* Comments of GE at page 7 ("material"), Comments of HCG at page 5 ("any costs"), Comments of HBO at pages 2-3 ("*de minimus*"), and Comments of Primestar at page 6 (*de minimus* as compared to installation charges).

[27] Dallas/NLC is concerned about the burden on municipalities of revising numerous regulations. This allegation is unsupported, but even if it were true, the burden could be minimized by simply not applying such regulations to satellite installations in a manner inconsistent with Section 25.104.

stated therein prevents local authorities from improperly using *post-hoc* rationalizations to uphold the use of a regulation that unnecessarily burdens users of satellite services.[28] Second, a clearly expressed rationale gives antenna users an opportunity to assess in advance the likelihood of being allowed to install antennas,[29] and would expedite the resolution of complaints filed at the Commission, by promoting the ability to evaluate the balance of federal and local interests.[30] Accordingly, the Commission should not adopt Dallas/NLC's suggestion.

Dallas/NLC also suggested (at pages 17-18 of its Comments) that Section 25.104 improperly shifts the "burden of persuasion" from the satellite antenna user to the municipality, and that the Commission should shift the burden back to the user, in order to limit the number of complaints filed at the Commission. Such a suggestion and rationale turns the principles of this proceeding on their head: the point of Section 25.104 is not to discourage complaints, but rather, to give users a forum to file complaints, after years of their having been frustrated at having no efficient and speedy local remedy. The Commission should reject Dallas/NLC's suggestion.

Proposed Section 25.104 (e) establishes the criteria under which a satellite antenna user has exhausted his local administrative remedies, and is thus eligible to file a complaint at the Commission. Section (e)(2) provides that exhaustion has occurred if

---

[28] *See* Comments of GE at page 8.

[29] *See* Comments of HBO at page 4.

[30] Furthermore, many courts have concluded that Section 25.104 currently requires that the objective be explicitly stated in the local ordinance. Comments of HNS at note 13, citing *Cawley v. City of Port Jarvis*, 753 F. Supp. 128, 132 (S.D.N.Y. 1990).

an application for a permit has been pending with local authorities for ninety days. Dallas/NLC suggests (at pages 19-20 of its Comments) that this provision should be deleted, stating that it is unlikely that local administrative procedures could be completed in such a time frame. Ironically, this candid admission demonstrates the necessity for Section (e)(2): the record demonstrates that lengthy delays in obtaining approvals for satellite installations unnecessarily and unfairly burden the right of individuals to receive satellite communications [31] Furthermore, lengthy delays also substantially restrict the ability of satellite services to compete against cable TV operators in the multichannel video market since cable subscribers need not go through any administrative process to obtain service.[32]

In sum, lengthy delays in the local zoning process substantially harm the federal interests that Section 25.104 is designed to protect. The Commission should not accept Dallas/NLC's transparent attempt to undercut the ability of antenna users to obtain a reasonably speedy remedy. Indeed, while USSB accepts the 90 day period established in Section (e)(2), a strong argument can be made that any delay of more than a few days is an unreasonable burden on antenna users, and harmful to multichannel competition, and that accordingly, the time period should be shorter.[33]

---

[31] *See* Comments of USSB at page 7-8, Comments of SBCA at page 9, Comments of HNS at page 16, Comments of Primestar at page 4, and Comments of CVE at page 3.

[32] *See, 1994 Competition R&O*, 9 FCC Rcd at 7555. *See also* Comments of USSB at pages 7-8, Comments of DIRECTV at page 4, Comments of HCG at page 5, and Comments of National Telephone Cooperative Association at page 2.

[33] *See* Comments of SBCA at page 35 (30 days), and Comments of Primestar at page 8 (30 days). Given the propriety of a *per se* preemption of all regulations affecting

III. CONCLUSION

The record in this proceeding demonstrates that the modification of Section 25.104 of the Commission's Rules is necessary to ensure the federal interests in the growth of satellite-delivered communications, and in competition in the provision of multichannel video programming services. The modifications proposed in the *Notice* are a step in the right direction. However, the Commission should totally preempt local zoning regulations affecting satellite dishes one meter in diameter or smaller. Furthermore, the proposed rule should be clarified and made more comprehensive, as suggested in USSB's Comments and herein, in order to maximize its effectiveness.

Respectfully submitted,

UNITED STATES SATELLITE
BROADCASTING COMPANY, INC.

By: _____
Marvin Rosenberg
Paul J. Feldman

Its Attorneys

FLETCHER, HEALD, & HILDRETH, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703)812-0400

August 15, 1995

---

the installation of one and two meter dishes, it would be appropriate to revise Section (e)(2) to state a shorter time period (e.g., 7 days) for proceedings involving such dishes.

CERTIFICATE OF SERVICE

I, Inder Kashyap, an employee of Fletcher, Heald & Hildreth, hereby certify that copies of the foregoing "Reply Comments of United States Satellite Broadcasting Company, Inc." were filed with the Federal Communications Commission on August 15, 1995, and copies served on that same day by first class U.S. mail, postage prepaid, to the following:

Diane S. Killory, Esq.
Joan E. Neal, Esq.
Joyce H. Jones, Esq.
Morrison & Foerster
2000 Pennsylvania Ave., N.W.
Suite 5500
Washington, D.C. 20006
(Counsel for the Satellite Broadcasting and Communications Association of America)

Philip V. Otero, Esq.
Alexander P. Humphrey, Esq.
GE American Communications, Inc.
1750 Old Meadow Road
McLean, VA 22102

James F. Rogers, Esq.
James H. Barker, Esq.
Steven H. Schulman, Esq.
John P. Janka, Esq.
Latham & Watkins
1001 Pennsylvania Ave., NW
Suite 1300
Washington, DC 20004
(Counsel for DIRECTV, Hughes Communications Galaxy, Inc. and Hughes Network Systems, Inc.)

David Cosson, Esq.
L. Marie Guillory, Esq.
N.T.C.A.
2626 Pennsylvania Avenue, NW
Washington, DC 20037

Michael H. Hammer, Esq.
Brian A. Finley, Esq.
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW, Ste 600
Washington, DC 20036-3384
(Counsel for Home Box Office)

Benjamin J. Griffin, Esq.
Paul D. Manca, Esq.
Reed, Smith, Shaw & McClay
1301 K Street, NW
Suite 1100, East tower
Washington, DC 20005
(Counsel for Primestar Partners L.P.)

Harold K. McCombs, Jr., Esq.
Janice L. Lower, Esq.
Barry F. McCarthy, Esq.
Michael R. Postar, Esq.
Tanja M. Shonkwiler, Esq.
Duncan, Weinberg, et al.
1615 M Street, NW, Ste. 800
Washington, DC 20036

Janis D. Everhart, Esq.
Scott Carlson, Esq.
Assistant City Attorneys
City of Dallas
1500 Marilla, Room 7/D/N
Dallas, Texas 75201

John W. Pestle, Esq.
Randall W. Kraker, Esq.
Varnum, Riddering, et al.
Bridgewater Place
P.O. Box 352
Grand Rapids, Michigan 49501-0352
(Attorneys for Michigan and Texas Communities)

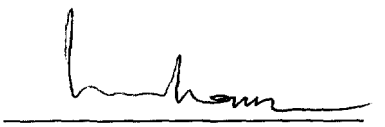
Craig J. Blakeley, Esq.
Powell, Goldstein, et al.
1001 Pennsylvania Ave., NW
Washington, D.C. 20004
(Counsel for Sony Electronics Inc.)

Karsten Amlie, Esq.
Leibowitz & Associates
One Southeast Third Avenue
Suite 1450
Miami, FL 33131
(Counsel for City of Plantation)

James B. Edmonson, Director
Community & Economic Development
City of Muskegon
933 Terrace Street
Muskegon, Michigan 49440

Robert A. Manbach, Esq.
COMSAT Video Enterprises, Inc.
6560 Rock Spring Drive
Bethesda, MD 20817

John B. Richards, Esq.
John Reardon, Esq.
Keller and Heckman
1001 G Street, NW
Suite 500 West
Washington, DC 20001
(Counsel for N.R.T.C.)



Inder Kashyap